123 FERC ¶ 61,290
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

ISO New England Inc. Docket No. ER08-633-000

ORDER ACCEPTING FILING

(Issued June 20, 2008)

1. In this order, the Commission accepts a filing by ISO New England, Inc. (ISO-NE) providing the results of ISO-NE's first Forward Capacity Auction (FCA).

I. Background

2. On March 6, 2006, ISO-NE filed a Settlement Agreement establishing the framework for New England's Forward Capacity Market (FCM).[1] Under the FCM mechanism, ISO-NE will provide capacity payments to resources that provide capacity to the New England region, and capacity resources will compete to be selected to provide capacity (and receive payments) on a three-year forward basis through a FCA held every year. The Commission has accepted market rules that outline the rights and obligations of capacity resources.[2] ISO-NE conducted its first FCA on February 4-6, 2008, and is preparing to conduct the second FCA in December 2008.

[1] *See generally Devon Power LLC*, 115 FERC ¶ 61,340 (FCM Settlement Order), *order on reh'g*, 117 FERC ¶ 61,133 (2006) (FCM Rehearing Order).

[2] On February 15, 2007, ISO-NE filed revisions to its market rules to implement the FCM. The Commission accepted a portion of the market rules on April 16, 2007 (*ISO New England Inc*., 119 FERC ¶ 61,045, *order on reh'g*, 120 FERC ¶ 61,087 (2007)), and the remainder on June 5, 2007 (*ISO New England Inc*., 119 FERC ¶ 61,239 (2007) (June 5 Order), *reh'g denied*, 122 FERC ¶ 61,171 (2008)).

3. On March 3, 2008, ISO-NE submitted a filing containing the results of the February 2008 FCA to the Commission. ISO-NE asks the Commission to accept this FCA Results Filing.

4. ISO-NE states that, pursuant to section III.13.8.2 of ISO-NE's tariff, it is submitting the results of the FCA, including, *inter alia*, the final set of Capacity Zones resulting from the auction and the Capacity Clearing Price, to the Commission under section 205 of the Federal Power Act (FPA).[3] It states that the auction resulted in only one Capacity Zone for the entire New England region, with a Capacity Clearing Price of $4.50/kW-month. ISO-NE further states that, under the formula contained in section III.13.2.4 of the tariff, the Cost of New Entry (CONE) is adjusted based upon the results of each successful auction, and since this auction concluded with a price of $4.50/kW-month, CONE for the second FCA will be $6.00/kW-month.[4] ISO-NE asserts that the results of the auction show that the FCM worked as designed to attract investment in new resources while maintaining needed existing resources in New England.

5. ISO-NE states that it procured capacity equal to the region's Installed Capacity Requirement (ICR)[5] of 32,305 MW. Because the auction cleared at the floor price with excess capacity above the ICR, resources may choose between a Capacity Supply Obligation of their full cleared capacity at a price of $4.254/kW-month, or receiving the floor price of $4.50/kW-month and prorating their Capacity Supply Obligation by the same ratio. Thus, the auction will purchase between 32,305 MW and 34,077 MW, depending on the proration elections of the auction participants.

6. According to ISO-NE, two of the goals of the FCM were to encourage participation of demand resources and to decrease the number of reliability-must-run (RMR) agreements (under which generators are paid out-of-market rates to ensure the operation of units needed for reliability) in New England, and it states that both of those goals have been met. 2,554 MW of demand resources cleared in the auction, including

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[3] 16 U.S.C. § 824d (2000).

[4] *See infra* P 9.

[5] The ICR is "the level of capacity required to meet the reliability requirements defined for the New England Control Area" (definition of ICR at ISO-NE Tariff at 3rd Rev. Sheet No. 7034) such that "the probability of disconnecting non-interruptible customers due to resource deficiency, on the average, will be no more than once in ten years." See ISO-NE § III.12.1 of the ISO-NE Tariff at 1st Rev. Sheet Nos. 7307A.

1,188 of new demand resources.[6] With regard to RMR agreements, ISO-NE states that there are currently 18 units (representing approximately 3,200 MW of generation) under Commission-approved Reliability Agreements in New England, which will expire on June 1, 2010 (the beginning of this auction's Capacity Commitment Period). Of that amount, the ISO determined that two resources representing approximately 330 MW are still needed for reliability and, thus, did not allow those resources to withdraw from the capacity market, as discussed below.

7. The FCM also sought to include a locational element in the market design to ensure that resources were located where needed for reliable operation of the system. As required by the FCM settlement,[7] ISO-NE modeled two Capacity Zones, Maine (as a potentially export-constrained zone) and Rest of Pool. ISO-NE states that no price separation occurred during this FCA, and therefore, the FCA resulted in a single Capacity Zone.

8. Under the FCM, resources may opt out of the market by submitting a de-list bid during the auction, so that if a unit is not needed for reliability, that resource is allowed to withdraw from the auction.[8] ISO-NE states that approximately 241 of such de-list bids (904 MW) were accepted and allowed to leave the auction. ISO-NE states that for reliability reasons, it rejected de-list bids from two units located in Connecticut, namely, Norwalk Harbor Unit I and Unit 2 (Norwalk Harbor units) owned by NRG Power Marketing. ISO-NE states that, pursuant to section III.13.2.5.2.5 of its Tariff, it determined that the units are currently needed for system reliability. ISO-NE states that maintenance of the transmission security margin for the Connecticut sub-area required the rejection of the Norwalk Harbor de-list bids, in that allowing either of the Norwalk Harbor Units to leave the market would have resulted in the inability of the Connecticut sub-area to meet the "Area Transmission Requirements" specified in ISO Planning Procedure No. 3.[9] ISO-NE further argues that, given the relatively low transmission

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[6] Transmittal at 6. By comparison, 30,865 MW of generation cleared in the auction, including 626 MW from new generating resources. Additionally, 934 MW of existing import capacity cleared in the auction. *Id.*

[7] ISO-NE tariff § III.13.8.1(a) requires ISO-NE to inform the Commission of the locational capacity requirements of the FCA based upon the topology of the transmission system, including whether it is appropriate to model separate Capacity Zones.

[8] This type of de-list bid is referred to as a "Dynamic De-List Bid" in the tariff.

[9] *See* testimony of Stephen Rourke, Attachment C to FCA Results Filing (Rourke Testimony), at 7, 16.

security margin in the Connecticut sub-area, it is highly unlikely that the ISO will allow proration based on bid MW for resources within the Connecticut sub-area. ISO-NE also states that the tariff provides that such units will receive just and reasonable compensation as determined by the Commission,[10] and ISO-NE is working with market participants to address compensation for resources with de-list bids rejected for reliability reasons and expects to make a filing with the Commission on this issue by July 2008.

9. Section III.13.2.4 of the Tariff specifies how CONE will be determined until three successful FCAs have been conducted for a Capacity Zone.[11] Following the first successful FCA, but prior to the completion of the second FCA for each Capacity Zone, CONE for each Capacity Zone will equal $3.75/kW-month plus 50 percent of the Capacity Clearing Price in the Capacity Zone in the first FCA. Accordingly, CONE for the upcoming second FCA will be $6.00/kW-month.[12] The starting price for the second FCA will be $12.00/kW-month (two times CONE), and certain de-list bids above $4.80/kW-month must be submitted to the ISO-NE market monitor for review by March 14, 2008 in order to be permitted to submit the bid in the second FCA.

10. Notice of ISO-NE's filing was published in the *Federal Register*, with motions to intervene, notices of intervention, comments and protests due by March 24, 2008.[13] Timely motions to intervene and notices of intervention were filed by the Massachusetts Department of Public Utilities, Dynegy Power Marketing, Calpine Corporation, BG Energy Merchants, Mirant Parties, the Connecticut Attorney General, the Connecticut Municipal Electric Energy Cooperative (CMEEC), the New England Conference of Public Utility Commissioners (NECPUC), the NRG Companies (NRG), the New England Power Pool Participants Committee (NEPOOL), and Northeast Utilities Service Company. Timely motions to intervene and comments or protests were filed by FPL Energy (FPL), the PSEG Power Companies (PSEG), the PPL Companies (PPL), the New England Power Generators Association (NEPGA), the Connecticut Department of Public Utility Control (CT DPUC), the Connecticut Office of Consumers Counsel (CT OCC), and FirstLight Power Resources (FirstLight). Motions to intervene and notices of intervention out of time were filed by the Maine Public Utilities Commission, ANP

[10] ISO-NE tariff § III.13.2.5.2.5(b).

[11] That section defines a "successful FCA" as an FCA in which the Capacity Zone has neither inadequate supply nor insufficient competition.

[12] The price floor for the second FCA will be $3.60/kW-month (i.e., 60 percent of $6.00).

[13] 73 Fed. Reg. 13,876 (2008).

Funding I, the New Hampshire Public Utilities Commission, Dominion Resources, and EnerNOC. TransCanada Power Marketing (TransCanada) filed a motion to intervene out of time and a protest. NEPOOL, NRG, ISO-NE and NECPUC filed answers to the comments and protests; ISO-NE and FirstLight filed answers to those answers and the CT DPUC filed a motion to lodge testimony in another proceeding; and ISO-NE filed a third answer to FirstLight's answer.[14] ISO-NE also filed an answer to the CT DPUC's motion to lodge material from another proceeding.

II. Discussion

A. Procedural Issues

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2007)), the notices of intervention and the timely-filed unopposed motions to intervene serve to make the entities filing them parties to this proceeding. The motions to intervene and to file a notice of intervention out-of-time are granted, given the early stage of the proceedings, the parties' interest and the absence of undue prejudice or delay.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers filed by the parties because they have provided information that assisted us in our decision-making process. We deny the CT DPUC's motion to lodge testimony from another Commission proceeding, on the basis that it does not provide information that has assisted us in our decision-making process.

B. Determination of CONE

1. Protests and Answers

13. Because the price in the first auction reached the floor price, CONE will be reset in the second auction from $7.50 to $6.00 kW/mo,[15] a 20 percent reduction. NEPGA and FirstLight argue that this "updated" value almost certainly does not reflect the actual cost of new entry of capacity resources in the New England market. NEPGA asserts that if future auctions also clear at the floor, CONE will very quickly fall to levels so low that

[14] ISO-NE's answer to the protests was filed on May 2, 2008; its second answer was filed on May 9, 2008; and its third answer was filed on May 28, 2008.

[15] This is pursuant to section III.13.2.4 of the Tariff at 1st Rev Sheet No. 7311B.

FCM could fail to attract investment in new capacity resources. NEPGA argues that this would be happening at a time when construction costs are rising dramatically,[16] and new entry is likely to be needed. Multiple parties argue that stakeholders should examine the rules for updating CONE and propose necessary reforms to ensure that it is not reset at artificially reduced levels when applied to auction functions that require a value for CONE that reflects the actual cost of new entry. FirstLight notes that both NYISO and PJM have mechanisms in place that reset CONE to ensure that it accurately reflects the true cost of new entry.

14. NEPGA claims that the parties simply did not foresee the dramatic increase in the actual cost of new entry, or the precipitous decline in CONE that would result if a substantial number of new capacity resources elected to be price takers. NEPGA argues that allowing CONE to decrease as it has in the first FCA has no advantages and several disadvantages in the FCM, including: (1) increasing ISO-NE's Internal Market Monitoring Unit (INTMMU)'s work load because it must review more new bids and de-list bids triggering mitigation related to CONE-based thresholds; (2) increasing the INTMMU's intrusion into the market through the mandatory reset of bids, without any underlying market rationale; (3) increasing participant workload due to the need to supply detailed bid support documentation for more offers; (4) increasing risk because more resources must submit, and be bound to, de-list bids submitted to ISO-NE ten months in advance of the auction; and (5) reducing auction flexibility and price discovery, because de-list bids submitted during the auction (the principal mechanism under which all existing generation and demand resources participate in the auction) cannot be considered until the descending clock reaches a very low level.

15. NEPGA further states that because financial assurances used to prevent market participants from defaulting on their capacity obligations are tied to CONE, the market

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[16] NEPGA notes that both NYISO and PJM recently filed to increase CONE to levels substantially above $7.50 kW/mo, and that the CT DPUC recently sought project bids for peaking units and none of the twelve offers submitted in reply had a cost of new entry of less than $10.50 kW/mo. NEPGA notes that PJM's request to increase its CONE was denied largely based on PJM's failure to adequately consult with stakeholders prior to filing as required by its tariff. NEPGA states that the order explained, however, that "none of the intervenors dispute that the cost of constructing a new gas turbine facility has increased significantly since PJM last calculated the CONE in 2005," and did not preclude PJM from refiling after appropriate consultation with stakeholders. NEPGA comments at 6, n. 4, *citing PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,015, at P 30 (2008).

could be excessively exposed to the risk that resources will default if the financial assurances decline to very low levels. NEPGA also notes that certain capacity needs identified in reconfiguration auctions will be procured at no more than 1.25 to 1.5 times CONE, and failure to obtain capacity at that price will lead ISO-NE to defer procurement to a future reconfiguration auction. NEPGA also argues that if CONE falls too low versus true replacement capacity cost, then ISO-NE may procure insufficient capacity and expose participants to reliability risk.

16. PSEG similarly states that the level of out-of-market capacity that cleared in the first auction should raise concern about the adequacy of the auction pricing rules intended to preserve real market dynamics and to avoid the potential for monopsony power within the FCM design.

2. Commission Determination

17. The Commission notes that the methodology for resetting CONE in auctions subsequent to the first FCA was accepted by the Commission in both the FCM Settlement and the FCM rules.[17] ISO-NE points out in its answer that the determination of CONE in future FCAs was a "fundamental" aspect of the FCM Settlement;[18] the Commission agrees, and finds the protests filed by the various parties challenging the determination of CONE to be a collateral attack on past Commission orders accepting the FCM Settlement and FCM rules. The concerns raised by NEPGA, PSEG, and FirstLight are more appropriately raised in the ISO-NE stakeholder process, rather than in response to the instant filing, which relates solely to the results of the first FCA.

C. Use of Resource Adequacy Analysis versus Transmission Security Analysis to Determine De-List Bids

1. ISO-NE's Use of Installed Capacity Requirement/Local Sourcing Requirements and Transmission Security Analysis

a. Protests and Answers

18. Prior to conducting the February 2008 FCA, ISO-NE initially determined whether the New England region would be divided into more than one Capacity Zone, it did so

[17] ISO-NE tariff § III.13.2.4 (determination of CONE).

[18] ISO-NE answer at 7.

using the Local Sourcing Requirement (LSR) standard.[19] As ISO-NE notified the Commission in November 2007, it determined that no LSRs would apply that would require Connecticut, a historically constrained sub-area, to be modeled as a separate capacity zone.[20]

19. Multiple parties object to the use of different reliability criteria to determine whether Connecticut should be a separate capacity zone, and then later to assess whether capacity resources in Connecticut would be allowed to de-list. They point out that if the LSR had been set using the Transmission Security Analysis (TSA),[21] the standard by which ISO-NE tests for the ability of a resource to de-list, Connecticut would have been modeled as a separate capacity zone prior to the auction and the Norwalk Harbor units would have cleared in the auction creating a separate Connecticut pricing zone.

20. The CT OCC and CT DPUC argue that, by using the TSA to determine that the Norwalk Harbor units may not de-list, ISO-NE has procured capacity in excess of the amount of capacity it is authorized by the FCM Settlement to procure – namely, the ICR. Thus, these parties argue, under the FCM Settlement, Connecticut is only required to purchase an amount of capacity equal to the LSR, but as a result of ISO-NE's actions here, Connecticut is being required to purchase an amount of capacity in excess of the LSR. Similarly, the CT OCC argues that ISO-NE's transmission security standard is a

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[19] The ICR is the level of capacity required to meet the reliability requirements in the New England control area, i.e., that the probability of disconnecting non-interruptible customers due to resource deficiency will be no more than once in ten years, on average. *See* ISO-NE tariff § III.12. The LSR is a related standard: it is the minimum amount of capacity that must be electrically located within an import-constrained Load Zone to satisfy reliability requirements. *See* ISO-NE tariff §§ III.12.2 and III.12.2.1.

[20] See transmittal letter, ISO-NE filing in Docket No. ER08-190-000, November 6, 2007, at 4 ("[c]onsistent with the FCM Rules, the ISO has made specific determinations with regard to the Capacity Zones. Of particular note, the ISO has determined that given the Local Sourcing Requirements, and the capacity located in each zone, there are no import constrained zones, and therefore no Local Sourcing Requirements relevant to the FCAs. Given potential export constraints, however, the ISO determined that Maine should be modeled as a separate, export-constrained zone, resulting in two Capacity Zones for the FCA: Maine and Rest of Pool. The Rest of Pool Capacity Zone includes Massachusetts, Connecticut, Vermont, New Hampshire, and Rhode Island").

[21] The TSA examines operating conditions for an extreme seasonal peak demand hour to determine units that must be retained for reliability. *See generally* Rourke Testimony at 5-6.

more difficult standard to meet than is contemplated by the FCM Settlement and serves only to increase the amount of capacity purchased by Connecticut, because Connecticut will be required to purchase the 330 MW of capacity related to the Norwalk Harbor units through an RMR contract with the units' owner, NRG. The CT DPUC notes that the FCM Settlement and FCM rules do not allow for application of this more stringent standard, and even if the FCM Settlement permitted it, ISO-NE has not filed tariff changes to implement this different resource adequacy standard. The CT OCC argues that ISO-NE should have accepted, not rejected, the Norwalk Harbor units' de-list bids, and the Commission should not require Connecticut to enter into an RMR contract with the Norwalk Harbor units. The CT DPUC requests that the Commission acknowledge the ICR and LSR as the only appropriate measures of resource adequacy for the purposes of the FCM and require ISO-NE to reanalyze the reliability need for the Norwalk Harbor units.

21. PSEG and NEPGA claim that the maintenance of these two standards – one standard for generation adequacy and a higher standard for transmission security – will simply perpetuate the need for RMR contracts in ISO-NE. PSEG asserts that the FCM rules should be modified so as to apply the most binding reliability criteria – whether that is for generation adequacy or transmission security – for procurement in the auction. FirstLight requests that the FCM rules be changed so as to recognize both resource adequacy and transmission security reliability needs in determining Capacity Zones. NEPGA argues that stakeholders should reconsider the reliability review process under FCM to ensure that all of the reliability needs of the power system (both bulk and local) are adequately considered with appropriate input from all affected parties. NRG urges the Commission to require an expedited stakeholder process to be followed by a compliance filing that addresses whether a more stringent test should be applied to determining whether to create new capacity zones as soon as possible, in time to be implemented for the second FCA.

22. Both NEPGA and the CT DPUC object to a lack of transparency in the reliability review process conducted in conjunction with the FCAs. NEPGA states that while ISO-NE originally asserted that this reliability review process would be identical to the review process conducted when a unit proposes to retire or mothball under section I.3.9 of the Participants Agreement, it has since become clear that the review provides no opportunity for local transmission/distribution impacts to be discussed and addressed by affected parties. NEPGA notes that, whereas reliability reviews conducted in accordance with section I.3.9 of the Participants Agreement allow the unit owner to attend and participate in the reliability committee meeting when its unit is discussed, only ISO-NE and transmission owners participate in the FCA reliability review process. NEPGA argues that if ISO-NE's reliability analysis permits the permanent de-listing of a unit subsequently found to be required to meet local reliability needs, the options of the unit and the affected transmission owner will be severely and unfairly limited. The CT DPUC points out that ISO-NE does not explain why failure to satisfy a transmission security

requirement based on particular postulated system failures violates any Commission-approved reliability criteria. The CT DPUC states that "careful scrutiny" of ISO-NE's reliability determination is warranted given the tariff's lack of guidance about "the process or methodology ISO-NE must use to assess the reliability need for generating facilities that seek to de-list from the capacity market."[22] The CT DPUC argues that ISO-NE's reliability analysis is incomplete and lacks transparency for a variety of reasons.[23]

23. The CT DPUC also states that ISO-NE's new resource adequacy measures change unpredictably the cost/benefit assessments of Connecticut's reliability investments in new capacity and make it impossible to plan sensible, long-term reliability assurance policies.

24. ISO-NE states in its May 2 answer that the CT DPUC and CT OCC misunderstand the roles of the TSA and the ICR. It states that the TSA is a basic test of system security, which has been used as part of ISO-NE's reliability reviews in multiple proceedings. ISO-NE states that reliability has two elements: resource adequacy and system security, and both requirements must be met to ensure reliability. It also states that ISO-NE correctly followed the provisions of its tariff and requirements of the Northeast Power Coordinating Council (NPCC) in determining system security. Further, ISO-NE states that its use of the TSA will not prevent Connecticut from assuring its own resource adequacy through investing in capacity for reliability, since, if new capacity resources become available prior to the 2010/2011 Capacity Commitment Period, they can participate in the reconfiguration auctions, thus potentially enabling the Norwalk Harbor units to de-list.

25. Additionally, ISO-NE states that it followed its tariff in determining the LSR for Connecticut, and that the Commission has previously accepted that LSR determination.[24]

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[22] CT DPUC comments at 17.

[23] The CT DPUC finds the following gaps in ISO-NE's analysis: (1) ISO-NE fails to explain which operating guides or procedures were used in determining the Norwalk Harbor units' contribution to area voltage or stability; (2) ISO-NE fails to explain how the TSA it conducted relates to the stability, steady state, or fault current assessments described in ISO-NE Planning Procedure No. 3; (3) ISO-NE does not report the results of the analysis of the Norwalk Harbor units' contribution to thermal transmission reliability; and (4) ISO-NE provided no documentation or explanation of the basis for the affected transmission owners' concurrence with ISO-NE's reliability conclusion. CT DPUC comments at 18-19.

[24] ISO-NE May 2 answer at 21, citing *ISO New England Inc.*, 121 FERC ¶ 61,250 (2007).

ISO-NE further states that it had previously informed the Commission that, based on the projected amount of capacity in Connecticut, Connecticut would not be modeled as a separate capacity zone, and the Commission accepted that filing.[25] Thus, ISO-NE argues, NEPGA's and PSEG's attacks on the modeling of Connecticut are a collateral attack on a prior Commission order.

b. Commission Determination

26. Implementing the February 2008 FCA, ISO-NE properly relied on both transmission system security and resource adequacy criteria. NPCC defines reliability as having two elements: system security and resource adequacy.[26] In essence, system security is "the ability of the system to withstand disturbances," whereas resource adequacy "represents the ability of the system to meet the aggregate power and energy requirement of all consumers at all times."[27]

27. ICR and LSR are resource adequacy measures. The application of the LSR standard to specific locations, such as Connecticut, has already been accepted by the Commission and implemented by ISO-NE according to the FCM rules. The Commission accepted the 2010/2011 Capability Year determination of the LSR, and the Commission also accepted ISO-NE's informational filing in which ISO-NE made its determination that Connecticut would not be modeled as a separate Capacity Zone.[28]

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[25] ISO-NE May 2 answer at 21; *see also ISO New England Inc.*, 122 FERC ¶ 61,018, at P 9 (2008) (Qualification Order) ("ISO-NE contends that because there is sufficient existing capacity . . . in each potential import-constrained area, Connecticut and [northeastern Massachusetts] will not be modeled as separate Capacity Zones in the [February 2008] FCA.").

[26] The NPCC defines system security as "[t]he ability of the electric system to withstand disturbances such as electric short circuits or unanticipated loss of system elements," and defines resource adequacy as "[t]he ability of the electric system to supply the aggregate electrical demand and energy requirements of the customers at all times, taking into account scheduled and reasonably expected unscheduled outages of system elements." ISO-NE May 2 answer at 10, citing NPCC Document A-07.

[27] "Ensuring Generation Adequacy in Competitive Electricity Markets," Shmuel S. Oren, University of California at Berkeley, working paper at 2, revised June 3, 2003 (http://www.ieor.berkeley.edu/~oren/workingp/adequacy.pdf).

[28] *See* Qualification Order, *supra*.

28. Thus, the comments attacking the ICR and LSR determinations represent a collateral attack on previous Commission orders, since they seek to overturn Commission decisions already rendered. Similarly, the requests by PSEG and NEPGA for the Commission to direct a change to the LSR determination are inappropriately raised in this proceeding and we therefore reject those requests. Rather, PSEG, NEPGA, and other interested participants should raise their concerns with the calculation of LSR, ICR, or use of the TSA in assessing de-list bids in the New England stakeholder process.

29. The Commission rejects the CT DPUC's request that the Commission acknowledge the ICR and LSR as the only resource adequacy measures for the purposes of FCM. ISO-NE is required to follow the ISO-NE Tariff in determining the ICR and LSR and conducting the FCA, including reliability determinations for de-list bids submitted during the auction. As explained below, ISO-NE is required to comply with NPCC reliability standards, including assessing the effect of allowing a capacity resource to de-list on system security.

30. We also disagree with protesters regarding the characterization of use of the TSA as incompatible with the FCM rules and FCM Settlement. Contrary to the CT DPUC's arguments that the TSA establishes a new benchmark for the ICR/LSR values, we note that section III.13.2.5.2.5 of ISO-NE's tariff establishes that "capacity shall be deemed needed for reliability reasons if the absence of the capacity would result in the violation of any NERC or NPCC (or their successors) criteria, or ISO New England System Rules." Thus, the TSA is not a method to establish a new ICR, but rather an analysis to ensure transmission system security (rather than resource adequacy) for units seeking to de-list. The CT DPUC and CT OCC ignore both the NPCC definition of "reliability" as well as ISO-NE's requirement to conform to NPCC reliability criteria. As ISO-NE explains in its answer, "security," along with resource adequacy, is a key element of reliability, consistent with NPCC's definition.[29] As such, any assessment of whether the loss of a capacity resource would violate North American Electric Reliability Corporation (NERC), NPCC, or ISO-NE reliability criteria as required by section III.13.2.5.2.5 of the ISO-NE Tariff would necessarily require an analysis of the loss's effect on the security of the New England transmission system.

31. Further, the TSA is a basic system reliability review set out in NPCC criteria[30] that has been used by ISO-NE in its reliability need determinations in the context of whether

[29] ISO-NE May 2 Answer at 8, citing NPCC Document A-07.

[30] NPCC Document A-2, "Basic Criteria for Design and Operation of Interconnected Power Systems," section 5.

RMR contracts are necessary for specific resources.[31] ISO-NE has not based its reliability determination in RMR proceedings solely on resource adequacy standards, like the ICR and LSR. Rather, ISO-NE has long relied upon an analysis of system security – e.g., the TSA, or its predecessor-in-name, the Operable Capacity Analysis[32] – in its reliability determinations submitted along with RMR applications that have been accepted, and upheld, by the Commission in multiple orders.[33]

32. The CT OCC's request that the Commission not require Connecticut to make a payment arrangement with the Norwalk Harbor units is premature. First, as ISO-NE points out in its answer, the TSA is "not the final chapter" on whether these units will receive out-of-market compensation.[34] The FCM rules contemplate both additional procurement of capacity and transmission upgrades as solutions to reliability problems that prevent de-list bids from being accepted. As ISO-NE also points out in its answer, if enough capacity is procured in the reconfiguration auctions to meet the reliability needs related to the Norwalk Harbor units, those units will be allowed to de-list. Even if no solution is found to alleviate the reliability problem preventing the Norwalk Harbor units from de-listing, ISO-NE has not yet determined how out-of-merit units will be compensated in the FCM, and ISO-NE expects to make a filing with the Commission on this issue by July 2008.[35] The CT OCC's concerns regarding possible payment arrangements with the Norwalk Harbor units is more appropriately suited for comment in that proceeding.

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[31] *See, e.g., Braintree Electric Light Department*, 120 FERC ¶ 61,097, at P 11 (2007) ("Under Market Rule 1, ISO-NE has the authority to determine whether a generator is needed for reliability purposes, which is a prerequisite for negotiating an RMR agreement.") In determining whether the generator was needed for reliability, ISO-NE used an Operable Capacity Analysis, now called the Transmission Security Analysis.

[32] ISO-NE May 2 Answer at 3

[33] *See Milford Power Co.*, 110 FERC ¶ 61,299, *order on reh'g*, 112 FERC ¶ 61,154 (2005); *Bridgeport Energy, LLC*, 112 FERC ¶ 61,077 (2005); *PSEG Power Connecticut, LLC*, 110 FERC ¶ 61,020, *order on reh'g*, 111 FERC ¶ 61,441 (2005); Berkshire Power Company, LLC, 114 FERC ¶ 61,099 (2006).

[34] ISO-NE May 2 Answer at 18.

[35] Rourke Testimony at 15.

33. Regarding NEPGA's and the CT DPUC's concerns that the TSA lacks "transparency," the Commission disagrees. ISO-NE provided a sufficient explanation of the reliability determination process it undertook in assessing de-list bids:

> First, [ISO-NE] compared the resource's contribution to area voltage or stability based on current operating guides and procedures. Second, the maximum allowable amount of MW that could be de-listed in any import constrained sub area was calculated based on a deterministic transmission security analysis. The [TSA] examined the capability of static transmission interface transfer limits as a reasonable representation of the transmission system's capability to serve sub-area load with available existing resources. This deterministic analysis is currently used each day by system operations to assess the amount of capacity to be committed day-ahead to allow the system to withstand the loss of the largest unit or the loss of the second most critical transmission element after accounting for the occurrence of the first most critical contingency. Third, [ISO-NE] evaluated the need to keep the resource based on its contribution to thermal transmission reliability as determined through the use of PowerGEM TARA software which modeled in detail expected system conditions for 2010 – 2011. Fourth, the findings were finalized after consultation with the impacted Transmission Owner(s). The four steps outlined above represent the same methodology and criteria that have consistently been used for reliability need studies performed to determine if a unit seeking a reliability agreement is needed and its absence would violate reliability criteria.[36]

34. None of the protesters explain how an alleged lack of transparency in the TSA determination is indicative of wrongdoing by ISO-NE in conducting the FCA. Further, the TSA has a long history in New England and has been accepted for use by the Commission on multiple occasions.[37]

35. Regarding the CT DPUC argument that ISO-NE's TSA of the Norwalk Harbor units makes it impossible for Connecticut to plan sensible long-term reliability assurance policies, the Commission again disagrees. The CT DPUC misclassifies use of the TSA as "unpredictable," when it is clear from the FCM rules and NPCC standards that an assessment of security impacts from the de-listing of particular resources is required. Further, the FCM's structure, which requires capacity commitments to be made three years in advance of each Capacity Commitment Period, allows reliability issues to be

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[36] *Id.* at 5-6.

[37] *See supra* n. 35.

addressed in time for each Capacity Commitment Period; thus, Connecticut has ample opportunity to design a solution to any reliability constraint to allow resources whose de-list bids have been rejected for reliability reasons to de-list.

36. Finally, NRG's request for an expedited stakeholder process to consider the method by which ISO-NE determines capacity zones is rejected. ISO-NE has already submitted, and the Commission accepted, a prioritized list of issues related to the FCM that must be addressed.[38] NRG's requested relief is an attempt to unilaterally re-order the stakeholder-vetted and Commission-accepted list of priorities. Nevertheless, parties are encouraged to address concerns related to the determination of capacity zones as soon as practicable.

2. Invalidity of Assumptions Underlying the TSA

a. Protests and Answers

37. In addition to its assertion that ISO-NE may not apply the TSA to determine whether to accept de-list bids, the CT DPUC challenges the assumptions underlying the TSA. First, the CT DPUC argues that ISO-NE improperly excludes 359 MW of emergency generators from the TSA. The CT DPUC asserts that exclusion of these resources sends false signals that more capacity is needed for reliability, when that capacity is available, ready, and being paid to perform when called. The CT DPUC also asserts that in excluding these resources, ISO-NE is violating its planning procedures, which stipulate that all existing capacity resources will be modeled at their "Summer Qualified Capacity;" the CT DPUC points out that emergency generators are considered existing capacity resources in the FCM rules.

38. Second, the CT DPUC argues that ISO-NE improperly de-rates the amount of capacity available to Connecticut by approximately 9 percent (or 687 MW)[39] in conducting the TSA. The CT DPUC states that de-rating is an appropriate input for probabilistic analysis, but not for a deterministic analysis like the TSA. The CT DPUC argues that even if de-rating were appropriate, ISO-NE's de-rating factor is excessive for two reasons. First, the CT DPUC explains that the 33 percent de-rating factor for peaking units is in excess of the standard used to measure the probability of other generating facilities' availability – the demand equivalent forced outage rate (EFORd) – and does not provide justification for this deviation. Second, the CT DPUC asserts that

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[38] *ISO New England Inc. and New England Power Pool*, 121 FERC ¶ 61,070 (2007).

[39] CT DPUC comments at 25.

ISO-NE's use of a weighted EFORd of 5.62 percent for other Connecticut facilities is unsupported. The CT DPUC also states that ISO-NE has not justified reducing demand resources by an availability factor of 11 percent using 2006 data but disregarding the 2007 summer period, when FCM's provisions would be expected to improve performance.[40]

39. The CT DPUC also claims that ISO-NE disregarded external interface limits between Connecticut and New York that provide tangible reliability benefits for Connecticut and did not explain why it excluded these transmission lines from its analysis. The CT DPUC explains that these exclusions include the 1385 cable (approximately 100 MW of reliability benefits) and the Cross Sound Cable (approximately 100-330 MW of reliability benefits).

40. Further, the CT DPUC argues that the reliability determination was not specific to the Norwalk Harbor units; instead, the analysis applies to all of Connecticut. The CT DPUC asserts that if the Commission accepts this standard, Connecticut generators will be able to switch to a cost-of-service regime by submitting de-list bids any time that the competitive market prices in the FCA are likely to be relatively lower than potential earnings under a cost-of-service regime.

41. As noted above, the CT DPUC requests that the Commission acknowledge the ICR and LSR as the only appropriate measures of resource adequacy for the purposes of the FCM and require ISO-NE to reanalyze the reliability need for the Norwalk Harbor units; alternatively, if the Commission permits ISO-NE to apply "previously undisclosed resource adequacy criteria," it should include in its analysis all of the resources that are reasonably available to provide reliable capacity for Connecticut, including emergency generators, peaking units that are obligated to perform when called, and transmission lines to adjacent control areas.[41] The CT DPUC also argues that if ISO-NE determines that the Norwalk Harbor units are no longer needed for reliability under either of these standards when properly applied, ISO-NE should accept the de-list bids of the Norwalk Harbor units, especially considering that "the forced outage rates and maintenance outage rates of the Norwalk Harbor Units are relatively high."[42]

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[40] *Id.* at 27.

[41] CT DPUC comments at 9.

[42] Affidavit of Whitfield Russell, Attachment A to CT DPUC comments (Russell Affidavit), at P 14.

42. In its May 2 answer, ISO-NE asserts that the assumptions used by ISO-NE in performing the Transmission Security Analysis are appropriate and well established, having been used for several years in reliability analyses and consistent with NPCC criteria[43] and ISO-NE Planning Procedures.[44] ISO-NE states that that it has applied the derating factor here or comparable factors in prior proceedings, [45] and that the derating factor is supported by NPCC reliability criteria.

43. Regarding the CT DPUC's argument that ISO-NE improperly reduced the amount of capacity resources in Connecticut by 687 MW, ISO-NE argues that its methodology comports with NPCC and ISO-NE reliability criteria and has been used in past ISO-NE reliability reviews. ISO-NE explains that it has used these availability criteria – e.g., 33 percent de-rating factor for peaking units instead of EFORd, weighted EFORd of 5.62 percent for non-peaking and non-demand resources – in multiple past reliability determinations.[46] ISO-NE also asserts that its application of an unavailability factor of 11 percent for demand resources was consistent with section 3 of ISO-NE's Planning Procedure No. 3 and section 2.1 of NPCC A-2. Further, ISO-NE notes that the Summer 2007 Demand Resource availability data was not available when the LSR and ICR calculations were performed for the first FCA, and ISO-NE will update unavailability data in modeling the upcoming reconfiguration auctions. ISO-NE explains that if the updated models show that changes to demand resource availability assumptions resolve the need for the Norwalk Harbor units, the de-list bids will be approved, and the Norwalk Harbor units will be allowed to de-list for the purposes of the first FCA.[47]

44. Regarding the CT DPUC argument that ISO-NE improperly calculated the Connecticut import limit, ISO-NE states that it did include the 1385 Cable in calculating Connecticut's import limit. ISO-NE states that no reliability benefit provided by the

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[43] ISO-NE answer at 11, citing NPCC A-2 and A-07.

[44] *Id.* citing ISO-NE Planning Procedure No. 3.

[45] ISO-NE states that it has used these or comparable availability factors in past reliability need determinations, including Milford Power Units 1 and 2 (dated December 7, 2004); Bridgeport Energy (dated December 7, 2004); Bridgeport Harbor Unit 2 (dated December 6, 2004); New Haven Harbor (dated December 7, 2004); Mirant Kendall Steam Units 1-3 and Kendall Connecticut Unit 4 (dated June 29, 2007); and Mystic Units 7, 8 and 9 (dated December 7, 2004). *See* ISO-NE May 2 answer at 13.

[46] *Id.* at 13.

[47] *Id.* at 15.

Cross Sound Cable was included in the calculation of the Connecticut import limit because no import qualified over the tie for the first Capacity Commitment Period. ISO-NE further notes that it has learned from experience that in real-time, no capacity reserves are available from New York to Connecticut over the Cross Sound Cable, and that the Commission has found that it has not been demonstrated that "the Cross Sound Cable, by itself, makes any additional surplus of generation available to New England."[48]

45. Finally, ISO-NE states that it excluded 342 MW of real-time emergency generation consistently with section 3 of ISO-NE Planning Procedure No. 3, which states that "design studies will assume power flow conditions with applicable transfers, load, and resource conditions that reasonably stress the system."[49] ISO-NE states that, since real-time emergency generation is only available during times of a real time capacity deficiency – a time in which there is greater than "reasonable" stress on the system – reliability analyses do not rely on emergency conditions assumptions.

b. Commission Determination

46. The CT DPUC is opposed to many of the assumptions included in the TSA finding that the Norwalk Harbor units are needed for reliability during the 2010/2011 Capability Period. The CT DPUC specifically argues that in finding that the Norwalk Harbor units are needed for reliability, ISO-NE improperly reduced the amount of installed capacity resources in Connecticut by 687 MW. In support of this claim, addressing the derating of peaking units, the CT DPUC would have ISO-NE revise assumptions that it admits that ISO-NE has employed previously in similar analyses. CT DPUC witness Mr. Russell, in fact, acknowledges that ISO-NE "has often used the 33% derating of peakers in the past, but that does not justify its use here"[50] and that " this 33% derating for peaking units is based upon conservative failure-to-start assumptions, and has been the practice in New England since at least the late 1970s."[51] Mr. Russell's argument for increasing the planned rating for peakers is based on his assertion that "it is almost inconceivable that the operation of these units has not improved over the last 30 years."[52]

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[48] *Id.* at 16, citing *ISO New England Inc.*, 120 FERC ¶ 61,234, at P 64 (2007).

[49] *Id.* at 17.

[50] Russell Affidavit at P 22

[51] *Id*. at P 23.

[52] *Id*.

47. This observation by itself does not provide sufficient justification for overturning ISO-NE's engineering judgment. Nor does it demonstrate that this derating assumption is unjust and unreasonable, especially when we have approved its application previously. Importantly, CT DPUC's witness Mr. Russell fails to establish that ISO-NE's assumptions on generator availability (for peaking and non-peaking units) violate of section III.13.2.5.2.5 of ISO-NE's tariff , NPCC Reliability Criteria (section 5 of NPCC-2), or ISO-NE's Planning Procedures (specifically, section 3 of Planning Procedure 3), which incorporate the NPCC reliability standards.

48. Similarly, we find ISO-NE's application of an unavailability factor of 11 percent for demand resources, which was based on demand resource availability factors from 2006 (consistent with the ICR/LSR determinations) to be justified, especially in light of the fact that the 2007 demand resource availability factors were not available when the LSR and ICR calculations were performed for the first FCA. Further, as ISO-NE states in its May 2 answer, it will use updated availability data in modeling the upcoming reconfiguration auctions – that is, if the updated models show that changes to demand resource availability assumptions resolve the need for the Norwalk Harbor Units, the de-list bids will be approved and the units will not be retained for the 2010 Capacity Commitment Period.

49. The CT DPUC also argues that ISO-NE's decision to not credit Real-Time Emergency Generation (RTEG) resources in the reliability determination for the Norwalk Harbor units is unreasonable since "from a public policy perspective, it is difficult to rationalize why resources that are brought into the market for the very purpose of being available in specified situations, would be excluded when their capacity would be needed most."[53] Further, the CT DPUC contends that because ISO-NE's Planning Procedures state that all existing capacity resources will be modeled at their "Summer Qualified Capacity;" then these emergency generators should be considered existing capacity resources in the FCM rules. In defense of its analysis, ISO-NE cites section 3 of Planning Procedure 3 (PP-3), which states that "design studies will assume power flow conditions with applicable transfers, load, and resource conditions that reasonably stress the system." ISO-NE argues that because RTEG Resources are available only under Action 12 of ISO New England Planning Procedure No. 4 (OP-4 actions), i.e., operating procedures that are only implemented during a real time capacity deficiency, reliability analyses should not rely on such resources.

50. We find that ISO-NE's choice to exclude RTEG resources in assessing the reliability need for the Norwalk Harbor units, although conservative, is justified. As ISO-NE states, the exclusion of RTEG resources from reliability determinations is consistent

[53] CT DPUC filing at 23.

with the directive of section 3 of PP-3, which requires design studies, used for planning purposes, to "assume power flow conditions with . . . resource conditions that reasonably stress the system."[54] RTEG resources are brought on line only when ISO-NE calls an OP-4 emergency to address a severe capacity deficiency.[55] If reliability planning should be based on possible actions that "reasonably" stress the system, rather than unreasonably stress it, it is appropriate to exclude actions taken only under conditions of extreme emergency. By arguing that these units should be included in the reliability analysis because they are getting paid under the FCM, the CT DPUC is conflating the result of a reliability planning study with the result of actual system operations. As the CT DPUC's witness acknowledges, if RTEG resources with a capacity obligation under the FCM fail to perform, then they will be penalized and have their compensation reduced. However, that fact does not mean that the performance of RTEG resources (which can only be triggered under a specific operating condition) should be credited when modeling a reliability study for the Norwalk Harbor units. Maintaining this distinction is, moreover, consistent with a prior Commission order distinguishing between planning standards and operating criteria.[56]

51. The CT DPUC also disputes ISO-NE's basis for allowing a limited crediting of RTEG resources in determining the ICR/LSR values for the first FCA,[57] while ISO-NE's reliability analysis for the Norwalk Harbor units excludes the use of RTEG resources. We note that this argument similarly fails to recognize the distinction discussed previously between the initial resource adequacy analysis performed in support of the ICR/LSR determination and the separate reliability study performed for units seeking to delist under section III.13.2.5.2.5 of ISO-NE's tariff. We again note the difference

[54] ISO-NE May 2 answer at 17, citing PP-3.

[55] *See* ISO-NE Operating Procedures Manual, Operating Procedure No. 4, Revision No. 8 (OP-4 Manual). The OP-4 Manual establishes criteria by which ISO-NE may declare OP-4 conditions; the criteria all involve a real time capacity deficiency in New England.

[56] Qualification Order, 122 FERC ¶ 61,018 at P 85 ("We note that planning procedures are specifically designed to study the system in the planning time frame, one or more years in the future, and generally use more stringent reliability criteria [than operating criteria] due to the many uncertainties inherent in longer-term forecasts. . . . Operating criteria are used by system operators in real-time operations, and we agree with ISO-NE that it is not appropriate to consider operator actions, such as dropping load[,] in planning studies").

[57] *ISO New England Inc.*, 121 FERC ¶ 61,250 (2007).

between the two analyses and find that ISO-NE has made a reasonable assumption in excluding the use of actions taken to address OP-4 emergencies in this reliability analysis. However, we do agree with the CT DPUC that section 6.1 of Planning Procedure 10 (which establishes conditions for the review of de-list bids) requires existing capacity resources to be modeled at their Summer Qualified Capacity. We find that one possible interpretation of this language from Planning Procedure 10 (PP-10) is that qualified RTEG resources should be included in any review of de-list bids, which would conflict with ISO-NE's decision to not credit OP-4 actions in this analysis. Although ISO-NE's Planning Procedures are not filed with the Commission, in order to clarify this provision for future reviews of de-list bids, we recommend that ISO-NE modify PP-10 to specifically acknowledge that RTEG resources will not be credited in the review of de-list bids.

52. The CT DPUC claims that ISO-NE disregarded external interface limits between Connecticut and New York when ISO-NE calculated the Connecticut Import Limit and excludes from its analysis the reliability benefits provided by the "1385 Cable" that connects Norwalk, Connecticut and Northport, Long Island. We find that ISO-NE has made reasonable assumptions in modeling the external interface limits between Connecticut and New York. For example, ISO-NE acknowledges in its May 2 Answer that Connecticut's 2500 MW import limit includes the reliability benefit provided by the 1385 Cable – which was included among the ties defining the Connecticut Interface. Further, addressing the Cross Sound Cable, ISO-NE states that it did not model reliability benefits from this line in the TSA since no import qualified over the tie for the 2010/2011 Capacity Commitment Period.[58] ISO-NE has found that no capacity reserves are available from LIPA via the Cross Sound Cable,[59] and ISO-NE further states that it does not know the amount of additional tie reliability benefits, if any, that would be available over the Cross Sound Cable when emergency assistance is required because it and the New York Independent System Operator have not found a way to calculate any additional benefits isolated to the Cross Sound Cable. As such, we find ISO-NE's assumptions regarding external interface limits to be reasonable.[60]

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[58] Rather, ISO-NE notes, a 100 MW export toward the Long Island Power Authority (LIPA) qualified and cleared in the FCA. ISO-NE May 2 Answer at 16.

[59] In support of this statement, ISO-NE references *ISO New England Inc.*, 120 FERC ¶ 61,234, at P 64 (2007).

[60] In addition, CT DPUC moves to lodge testimony from Peter Brandien, Vice President of System Operations for ISO-NE, in Docket EL08-48-000. In that testimony, differentiating second-contingency load shedding across NEMA and Southwest

(continued...)

53. As for arguments that the relatively high forced outage rates for the Norwalk Harbor units precludes their practical use as RMR resources, we first note that this argument is premature, since later reconfiguration auctions may make the reliability need for these units unnecessary. Moreover, even if the Norwalk Harbor units do have relatively high forced outage rates, retention of those units as RMR resources may, nevertheless, be the best of the available options to maintain reliability in Connecticut.

54. Last, we recognize that the CT DPUC is concerned that generators in subsequent auctions who are confident that they are needed for reliability might seek to de-list at a price slightly below 0.8 times CONE. However, the compensation mechanism for RMR units (including whether such payments will be tied to unit availability, as they are currently) has yet to be determined, and we note that the incentive to pursue such a strategy will largely depend on the terms of ISO-NE's as-yet-unfiled proposal for compensation of RMR units. We would expect that any proposed revisions to the current compensation mechanism for reliability units will limit or eliminate concerns over generators earning the "higher of" a market or cost-based rate.

D. Issues Relating to Demand Resources

1. Role of Demand Resources in Determination of ICR

a. Protests and Answers

55. FirstLight and FPL claim that the treatment of demand resources in the FCM contrasts dramatically with the manner in which they are treated in setting ICR and LSR. FirstLight and FPL state that when analyzing the ICR and LSR requirements, ISO-NE considers the existing mix of resources for their impact on system reliability. FirstLight states that for the 2010/2011 Capability Year, ISO-NE considered 747.8 MW of existing demand resources for the ICR and LSR. FirstLight notes that, of those totals, 318.4 MW

Connecticut from lower SEMA, Mr. Brandien explains that "in Southwest Connecticut, the ISO is also in a position to call for emergency energy imports from Long Island over the Cross Sound Cable and 1385 cable prior to load shedding." CT DPUC Motion to Lodge, Attachment A at 23. As discussed above, the Commission is denying this Motion to Lodge. Assuming *arguendo* that we were to consider this evidence, however, Mr. Brandien's statement shows, at best, that ISO-NE believes that it may be able to call on some quantity of emergency imports over the Cross Sound Cable. However, consistent with our discussion concerning the exclusion of RTEG resources in assessing the reliability need for the Norwalk Harbor units, we do not believe that long-term reliability planning should rely on specific operating procedures taken to address emergency situations.

were real-time demand resources, 333.7 were emergency generators, and 96.7 were DSM demand resources.[61] FirstLight explains that these resources were further reduced by factors reflecting their actual performance – a weighted average of 87 percent for the real-time demand resources, 79 percent for emergency generators, and 100 percent for demand resources participating in ISO-NE demand side management programs. FirstLight and FPL argue that in direct contrast with how demand resources are treated for ICR purposes, the 2,554 MW of demand resources that cleared in the first FCA were not adjusted to account for any measure of unavailability.

56. FPL also claims that in basing its 2010/2011 ICR calculation on existing resources, rather than projected resources, ISO-NE violated NERC planning standard MOD-016-0, Requirement 1 and greatly underestimated the amount of demand resources that would clear in the first FCA. FPL explains that this NERC standard requires the Planning Authority and Regional Reliability Organization to have documentation identifying the scope and details of the actual and forecast demand data to be reported for system modeling and reliability analyses. FPL requests that the Commission direct ISO-NE to determine the ICR for future capacity years based on forecasted data, and thus in a manner consistent with NERC standards. FPL claims that ISO-NE's failure to adjust for availability of demand resources and failure to base the ICR determination on forecasted resources resulted in an over-procurement of demand resources, an under-procurement of generation capacity, and an overall under-procurement of 500-700 MW of capacity.[62]

57. FPL argues that the Commission should direct ISO-NE to revise its first FCA results by awarding new Capacity Supply Obligations, on a prorated basis, to the 2,047 MW of excess capacity that remained in the auction at its end, priced at the FCA floor of $4.50/kW-month. FPL argues that these resources should not be required to obtain Capacity Supply Obligations in reconfiguration auctions because there are no price floors in those auctions. FPL also asserts that ISO-NE should be directed to adopt market rules, if necessary, to ensure that a similar situation does not arise in future auctions.

58. Finally, FPL requests that the Commission direct its Office of Enforcement (OE) to expand its non-public investigation of allegations that certain demand resources

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[61] FirstLight comments at 10.

[62] FPL explains that it arrives at this range of under-procurement by considering: (1) 600 MW of Real Time Emergency Generation (at a 79 percent availability factor), compared with the 333 MW assumed in calculating the ICR; (2) an increase in DSM Demand Resources by 55 MW over the 2010/2011 ICR (with 100 percent availability factor); and (3) applying the 60.6 percent availability factor to the remaining incremental 1,480 MW of Demand Response.

participating in ISO-NE's Day-Ahead Demand Response Program may have manipulated their customer baselines in violation of the Commission's rules. FPL requests OE to determine whether overstated customer baselines by demand resources also resulted in the manipulation of FCM resource capacity qualifications, in violation of section 222 of the Federal Power Act.

b. Commission Determination

59. The Commission will dismiss FPL's arguments regarding ISO-NE's calculation of the 2010/2011 ICR. FPL – which did not file comments in the proceeding establishing the 2010/2011 ICR – is improperly using the instant docket as a forum for challenging the Commission-accepted ICR calculation methodology and assumptions. FPL's protest represents an improper collateral attack on previous Commission orders accepting the 2010/2011 ICR calculation.[63] As we have stated in the past, "[c]ollateral attacks on final orders and relitigation of applicable precedent . . . thwart the finality and repose that are essential to administrative efficiency, and are therefore strongly discouraged."[64] Further, the assumptions supporting the ICR calculation and the ICR calculation methodology are both products of the ISO-NE Tariff.[65] In addition to accepting ISO-NE's assumptions and methodology for calculating ICR in the 2010/2011 ICR Orders, the Commission has also accepted use of the assumptions and calculation methodology in previous years.[66]

60. FPL's request that the Commission direct ISO-NE to alter the method by which ISO-NE determines the ICR is also inappropriate. As noted above, the Commission has repeatedly found the ICR calculation methodology and underlying assumptions – including the availability rating of demand resources – just and reasonable, and FPL's request is a collateral attack on those orders and outside the scope of this proceeding. The Commission adds that nothing in this order or in the ISO-NE Tariff prevents FPL

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[63] *ISO New England Inc. and New England Power Pool*, 121 FERC ¶ 61,250 (2007), *reh'g denied*, 123 FERC ¶ 61,129 (2008) (2010/2011 ICR Orders).

[64] *NSTAR Electric Company v. ISO New England Inc.*, 120 FERC ¶ 61,261, at P 33 (2007); *see also Pacific Gas & Electric Co.*, 121 FERC ¶ 61,065, at P 38-40 (2007) (citing *Alamito Co.*, 41 FERC ¶ 61,312, at 61,289 (1987), *order denying reconsideration and granting request for clarification*, 43 FERC ¶ 61,274 (1988)).

[65] ISO-NE tariff § III.12.

[66] *See, e.g., ISO New England Inc.*, 119 FERC ¶ 61,161 (2007); *ISO New England Inc.*, 111 FERC ¶ 61,185 (2005), *remanded on jurisdictional grounds, Conn. Dept. of Pub. Util. Control v. FERC*, 484 F.3d 558 (D.C. Cir. 2007).

from raising its concerns in the New England stakeholder process or in response to a more relevant filing.

61. FPL's request to revise the results of the auction and award new Capacity Supply Obligations to the 2,047 MW of excess capacity that remained in the auction at the price floor is inappropriate and dismissed. FPL's request is rooted in its assertion that the ICR was improperly determined. As noted above, FPL had ample opportunity to comment on the determination of ICR and failed to do so. The instant docket is not the proper forum for raising concerns with the calculation of the ICR, and as such, any request to alter the results of the auction based on arguments attacking the ICR calculation methodology is inapposite. FPL states that its requested relief would be fair, considering "as much as one-third of [generators that remained in the auction at its conclusion] would have received $4.50/kW-month had ISO-NE properly accounted for Demand Resources [in determining the ICR]."[67] FPL is mistaken. ISO-NE did properly account for demand resources in determining the ICR as required by the ISO-NE Tariff, and, as such, FPL's requested relief is unwarranted.

62. Finally, regarding FPL's request that the Commission direct OE staff to expand its investigation to determine whether overstated baselines by demand resources resulted in manipulation of FCM capacity resource qualification, FPL has provided little or no support in its protest; instead, FPL merely seeks to link the behavior under investigation – alleged baseline inflation by demand resources in the Day-Ahead Load Response Program – to the Forward Capacity Market. To do so, FPL relies on statements made by an ISO-NE employee in testimony in support of market rule changes proposed by ISO-NE in Docket No. ER08-538-000. However, the testimony in that proceeding linked the overstated baselines *only* to FCM transition payments made to demand resources,[68] *not* to capacity payments to be made to demand resources as a result of the first FCA. Moreover, for the purposes of participation in the FCM, demand resources are subject to a qualification process detailed in an ISO-NE manual related solely to participation in the FCM.[69] Given FPL's lack of support in its request for expansion of the OE investigation, and given the qualification process, we hereby deny FPL's request.

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[67] FPL comments at 15.

[68] Attachment 1 to transmittal letter in *ISO New England Inc*., Docket No. ER08-538-000, testimony of Henry Y. Yoshimura (February 5, 2008) at 5.

[69] ISO-NE Manual for Measurement and Verification of Demand Reduction Value from Demand Resources, Manual M-MVDR (M&V Manual).

2. Treatment of Demand Resources under FCM Rules

a. Protests and Answers

63. Multiple parties are concerned about the reliability implications of such increased reliance on demand resources for the supply of Capacity Resources and the impact that this new mix of capacity resources will have on future system operations.[70] FirstLight notes that there are no penalties for the unavailability of demand resources to serve as a sufficient incentive to ensure availability. FirstLight points out that if a demand resource is unavailable during a Shortage Event, the maximum penalty that can be assessed to a demand resource cannot exceed the revenues that it could have earned as a demand resource. FirstLight also asserts that, while generators could lose their entire FCM compensation for the Commitment Period if they suffer sufficient forced outages during Shortage Events prior the end of the Commitment Period, a demand resource does not lose its prior months' compensation if it discontinues load interruption service later in the Commitment Period. FirstLight argues that this makes supplying capacity in the Forward Capacity Market effectively a free option for a demand response provider. FirstLight asserts that a demand resource will get paid if it chooses to perform but can choose, instead, to serve its core business, earn revenues from that core business, and simply forgo the revenues the resource otherwise would have been paid if it chose to curtail its load, while the rest of the system will suffer the reliability consequences of non-delivery by underperforming resources. FirstLight argues that given the increased level of new, untested demand resources in the market, ISO-NE should carefully monitor these new demand resources and consider additional measures to ensure performance by demand resources.

64. NEPGA and PSEG argue that stakeholders should examine the FCM rules related to demand resources to review whether demand resources have been appropriately integrated into the market, especially whether demand resources are treated on a comparable basis with generation and whether any rule changes are in order. NEPGA asserts that demand resources, like any other resource, should be treated and compensated based upon the value they bring to the bulk power system in New England.

[70] The 2,554 MW of demand resources that cleared in the first FCA represents 7.9 percent of the ICR and 7.4 percent of the total capacity remaining at the end of the auction.

b. Commission Determination

65. The protests related to the FCM rules' treatment of demand resources are outside the scope of this proceeding. Demand resources participated in the auction according to the FCM rules, and ISO-NE conducted the auction consistent with the FCM rules. Nevertheless, NEGPA, PSEG, and FirstLight should raise their concerns regarding performance of demand resources – including examination of the FCM rules as they pertain to demand resources – in the New England stakeholder process. In addition, we agree with FirstLight that ISO-NE should carefully monitor demand resource participation in the FCM.

E. Issues Relating to Connecticut

1. Relationship of Norwalk Harbor Units to Connecticut Prices

a. Protests and Answers

66. Multiple parties state that in a properly implemented locational market, the two Norwalk Harbor units bid at $5.99 per kW-month – i.e., the marginal units in Connecticut – should have set the price for the all units within the constrained area in order to send the proper price signals regarding future new entry.

67. FirstLight objects to the failure of the auction pricing mechanism to recognize in any way the price signal of a generator whose de-list bid has been rejected for reliability reasons. FirstLight explains that the practical effect of rejecting the de-list bids of the Norwalk Harbor units was to treat those resources as price takers, unable to set the market clearing price. FirstLight asserts that ISO-NE stakeholder discussions regarding this issue have stalled,[71] and thus requests that the Commission direct ISO-NE to conduct a technical conference to examine this issue further.

68. ISO-NE states in its May 2 answer that the FCM settlement provides that de-list bids that are rejected for reliability reasons are not eligible to set the clearing price. Thus, ISO-NE states, it is precluded from allowing the Norwalk Harbor units to set the clearing price.[72]

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[71] FirstLight comments at 8-9.

[72] ISO-NE May 2 answer at 23.

b. Commission Determination

69. Parties protesting the clearing price in Connecticut ignore the plain language in the FCM Settlement that prevents de-list bids rejected for reliability reasons from setting the clearing price.[73]

70. FirstLight's request for a technical conference is also outside the scope of this proceeding. ISO-NE has submitted a filing revising the FCM rules to allow for a deferral of this issue for approximately two years.[74] FirstLight's request is appropriately raised in that proceeding.

2. Prorating Issues

a. Protests and Answers

71. PSEG states that ISO-NE does not appear to have properly administered its ISO-NE Tariff concerning the pricing of resources prevented from prorating (i.e., either selling all of the capacity a resource offered at a lower price than offered, or selling a lesser amount of capacity at the full price offered, as discussed above) because of local transmission security requirements. PSEG states that the instant filing is not entirely clear as to how ISO-NE envisions that resources prevented from prorating will be paid. PSEG states that ISO-NE suggested at a recent NEPOOL Markets Committee meeting that they will be priced in the same manner as if they are not allowed to prorate – in other words, priced at $4.254/kW-month. PSEG objects, and argues that such resources that are not allowed to prorate their Capacity Supply Obligations be paid the full clearing price, or $4.50/kW-month for the entirety of their cleared MWs.

72. PSEG states that the structure of the ISO-NE Tariff makes clear that resources not allowed to prorate should be paid the otherwise applicable clearing price. PSEG states that the ISO-NE Tariff describes the two potential outcomes when excess capacity clears in the auction: either the price is reduced by the proration fraction or, at the option of the supplier, the number of MWs that are committed to ISO-NE may be reduced by the proration fraction. PSEG asserts that the price/volume reduction provision only applies,

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[73] Settlement Agreement at § 11.III.G.1 ("Permanent De-list Bids and De-list Bids that are rejected for reliability reasons are not eligible to set the Capacity Clearing Price"); *see also* ISO-NE tariff, § III.13.2.5.2.5

[74] ISO New England Inc. and New England Power Pool, Limited Revision to FCM Rules to Extend Date for Filing Regarding Treatment of De-List Bids Rejected for Reliability Reasons, Docket No. ER08-952-000 (May 14, 2008).

however, when proration actually occurs; thus, the governing ISO-NE Tariff provision begins with the statement, "Where the Capacity Clearing price reaches 0.6 times CONE, *offers shall be prorated* such that no more than the Installed Capacity Requirement is procured in the forward Capacity Auction as follows . . . ."[75] PSEG states that the immediately following sentence of the ISO-NE Tariff, however, modifies the "shall be prorated" language by specifying that: "Any proration shall be subject to a reliability review."[76] PSEG states that because the proration price/volume reduction provision is expressly "subject to" the reliability review, the entire proration mechanism does not apply if the units are needed for local reliability reasons.

73. ISO-NE states that PSEG's suggestion that the Norwalk Harbor units should be paid the clearing price, because they are not allowed to prorate capacity, is inconsistent with the tariff, which provides that resources may choose between prorating the amount of capacity that they must supply, or the amount that they are paid, but that such proration is subject to reliability review by ISO-NE.[77]

b. Commission Determination

74. The Commission disagrees with PSEG's reading of the ISO-NE Tariff. PSEG's suggestion would violate section III.13.2.7.3(b) of the ISO-NE Tariff and the FCM Settlement, which prohibit ISO-NE from purchasing more capacity than what is equal to the ICR times the clearing price. To ensure this result, ISO-NE is required by the FCM Settlement and the FCM rules to prorate either the price or capacity obligation of resources that cleared in the auction. Thus, to conform to this provision in the FCM rules, ISO-NE must prorate all capacity resources, including those in Connecticut.

75. The FCM Settlement and FCM rules also contain language that subjects prorating decisions to a reliability review.[78] If, as is likely with Connecticut resources, allowing resources to prorate their MWs would violate reliability criteria, including the

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[75] PSEG comments at 8 (citing ISO-NE tariff § III.13.2.7.3(b) (emphasis added)).

[76] *Id.*

[77] ISO-NE May 2 answer at 23-24, citing ISO-NE tariff § III.13.2.7.3(b) ("Any proration shall be subject to reliability review").

[78] We reject PSEG's interpretation of ISO-NE tariff § III.13.2.7.3(b). After setting forth the proration rules, the tariff states that "[a]ny proration shall be subject to reliability review." We interpret this sentence as simply meaning that "any proration," regardless of when and how it might take place, is ultimately subject to ISO-NE's reliability review.

transmission security margin, the FCM rules are clear that such resources will only be allowed to prorate the price they receive and not their MW capacity obligation. PSEG argues, in essence, that because proration decisions are subject to reliability review, resources may sidestep the requirement that all resources that clear in an FCA where the price floor is reached be prorated. This is an inaccurate interpretation. Resources such as the Norwalk Harbor units in question here will still prorate; the reliability review simply means that they must prorate their price (rather than having the option to prorate the amount of capacity they provide). Thus, we dismiss PSEG's argument and interpretation of the FCM rules.

3. Price Impact of Connecticut's Contractually-Provided Units

a. Protests and Answers

76. PPL is concerned that the results of the FCA may not be competitive because some new entrants that responded to a CT DPUC solicitation were required by contract to bid as price takers or as existing capacity resources rather than as new capacity. Because these entities were assured compensation under contract, PPL emphasizes that they did not offer into the FCA on a basis comparable to other new entrants that depend on auction revenues to compensate them. PPL requests that the Commission require ISO-NE to study the effect of these below-cost offers and file a report on how these offers may have affected market clearing prices received by other participants. It asks the Commission to assure that any harmful effects are not replicated in future auctions.

b. Commission Determination

77. The Commission denies PPL's request to require ISO-NE to prepare and file an analysis of the effects of bid requirements that were imposed on certain generation via contract. The Commission agrees with PPL that such bid requirements could be a cause for concern if they applied to future FCAs, but since they do not apply to future FCAs, and because the floor of $4.50/kW-month was reached with a 2,047 megawatt surplus of capacity, we conclude that these contractual requirements did not have a bearing on the establishment of the price at the $4.50 floor. Even if all 787 megawatts identified by PPL had been offered at CONE, a surplus would have remained at the price floor. Consequently, we also conclude that future auction values for CONE were not affected by the one-time auction exception that allowed new generation to be treated as existing generation.

F. Composite Offers

1. Protests and Answers

78. TransCanada states that, in an abundance of caution, it wishes again to raise an issue regarding composite offers, which TransCanada claims were improperly

disqualified from participation in the February 2008 FCA, and which disqualification TransCanada is litigating in Docket No. EL08-43-000. It asks the Commission to rule, based on the arguments set forth in TransCanada's complaint in that docket, that ISO-NE reverse its disqualification of those composite offers, and accept them into the FCA at the floor price established in the FCA. ISO-NE, in its May 2 answer, states that TransCanada's protest improperly seeks to raise arguments beyond the scope of this proceeding.

2. Commission Determination

79. The Commission denies TransCanada's request for relief. TransCanada is seeking to raise a matter that the Commission has already decided,[79] and the Commission will not, therefore, address that matter here.

G. Recommendations for Further Proceedings

1. Protests and Answers

80. PSEG claims that although the FCM contains the basic elements of a robust capacity market design, multiple changes are needed. First, PSEG argues that continued work is needed to create market solutions for meeting reliability needs and use RMR contracts only as a last resort. Second, PSEG asserts that generator interconnection rules must be better coordinated with the FCM requirements. PSEG claims that a stable and predictable queuing process is necessary to provide incentive for future investment in capacity. Third, PSEG argues that auction timelines must be allowed to be more flexible in order to increase efficiency, reduce risks, and lower costs. NRG and FirstLight urge the Commission to conduct technical conferences and to require expedited stakeholder proceedings to consider the problems that have been discovered through the February 2008 FCA.

2. Commission Determination

81. As noted in ISO-NE's answer,[80] the issues raised in PSEG's comments are already being considered in the New England stakeholder process. Again, the instant docket is not the proper forum for consideration of PSEG's recommendations. The Commission also will not entertain the request of FirstLight for a technical conference, or of NRG for expedited stakeholder proceedings. As with many issues raised by parties in the instant

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[79] *TransCanada Power Marketing, Ltd*., 123 FERC ¶ 61,149 (2008).

[80] ISO-NE answer at 11.

proceeding, the stakeholder process is a more appropriate vehicle for FirstLight and NRG's concerns.

82. That said, the Commission recognizes that issues of importance have been raised by the protesters, most notably the potential problems associated with the decline of CONE and the difficulties associated with a regulatory scheme under which a constrained zone such as Connecticut does not become a separate Capacity Zone. The importance of these issues, however, does not render them appropriate for decision in the instant proceeding, which is limited to ISO-NE's filing regarding the results of the February 2008 FCA. The Commission encourages PSEG, ISO-NE, and all interested parties to discuss the concerns raised by parties in the stakeholder process.

The Commission orders:

ISO-NE's filing is hereby accepted, as discussed above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.